46 Am. Jur. 2d Judges § 73

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Judges

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VIII. Liabilities

A. Civil Liability

2. Liability for Particular Types of Conduct

b. Conduct Within Scope of Other Types of Immunity

§ 73. Acts of judges protected by qualified immunity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Judges 35, 36

Qualified immunity is designed to allow government officials to avoid the expense and disruption of going to trial, and is not merely a defense to liability. When a complaint fails to allege a violation of a clearly established law or when discovery fails to uncover evidence sufficient to create a genuine issue whether the defendant committed such a violation, the qualified immunity defense provides the defendant with immunity from the burdens of trial as well as defense to liability. It specially protects public officials from the specter of damages liability for judgment calls made in a legally uncertain environment. It protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority and done without willfulness, malice, or corruption. The protection of qualified immunity applies regardless of whether a government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.[1]

In some instances, judges performing nonjudicial actions to which absolute immunity does not apply may be entitled to qualified immunity from civil liability for money damages.[2] Courts have recognized this type of immunity to avoid unnecessarily extending the scope of the traditional concept of absolute judicial immunity.[3]

Official, or qualified, immunity protects governmental officials or employees from tort liability for the performance of their discretionary functions, within the course of their employment or official duties. The scope of the discretionary decisions, acts, or omissions protected by official immunity is broader than the functions of governing, with official immunity protecting the kind of discretion exercised at the operational level rather than exclusively at the policy-making or planning level.[4] In this regard, a judge who issued a contempt order to a potential juror, in an attempt to compel the latter to make an affirmation, was entitled to qualified immunity, since the unlawfulness of the judge's actions would not have been apparent to a reasonable

official in view of the fact that the statutes and rules usually provide that affirmations are to be offered as an alternative to an oath.[5] On the other hand, there was no qualified immunity for a judge who stopped a motorist on a highway after the latter honked a horn at the judge and motioned the judge to change lanes where state law did not include a judge within its definition of a peace officer, the use of a red light was a show of authority, the facts did not give rise to probable cause or reasonable suspicion, and the stop constituted an unreasonable seizure.[6] Likewise, a judge is not entitled to qualified immunity from a disgruntled litigant's claim that the judge, by speaking to the media and accusing the litigant of stalking the judge, retaliated against the litigant for engaging in the protected conduct of criticizing the judge and exposing the alleged wrongdoing, as the charged conduct violates clearly established First Amendment rights of which one in the judge's position would be cognizant.[7]

CUMULATIVE SUPPLEMENT

Cases:

Alleged injuries to applicant who was denied firearm license, and to applicant who applied for concealed-carry permit but had been granted only at-home permit, under New York firearm licensing scheme were fairly traceable only to judges acting as pistol permit licensing officers for applicants' counties of residence who denied their respective applications, and not to New York Governor, Attorney General, Superintendent of the State Police, and judge who was licensing officer for another county, and thus applicants lacked standing to bring § 1983 action challenging licensing scheme as violating the Second and Fourteenth Amendments against those latter defendants; there was no indication that the state officials and other judge had any role in licensing process or in consideration of the applications. U.S. Const. Amends. 2, 14; 42 U.S.C.A. § 1983; N.Y. Penal Law § 400.00. Libertarian Party of Erie County v. Cuomo, 970 F.3d 106 (2d Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Am. Jur. 2d, Public Officers and Employees § 314.
As to "absolute immunity," generally, see § 61.

2 Forrester v. White, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988); Malina v. Gonzales, 994 F.2d 1121 (5th Cir. 1993).

3 Forrester v. White, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988); Malina v. Gonzales, 994 F.2d 1121 (5th Cir. 1993).
As to traditional concept of nonliability, generally, see § 61.

4 Am. Jur. 2d, Public Officers and Employees § 318.

5 Society of Separationists, Inc. v. Herman, 939 F.2d 1207 (5th Cir. 1991), on reh'g, 959 F.2d 1283 (5th Cir. 1992).

6 Malina v. Gonzales, 994 F.2d 1121 (5th Cir. 1993).

7 Barrett v. Harrington, 130 F.3d 246, 39 Fed. R. Serv. 3d 643, 1997 FED App. 0344P (6th Cir. 1997).